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HOUSE BILL 91

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Andy Nuñez

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING A PERSONAL INCOME TAX CREDIT
AND A CORPORATE INCOME TAX CREDIT FOR AGRICULTURAL WATER
CONSERVATION EXPENSES; PROVIDING FOR A DELAYED REPEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted
to read:

"~~[NEW MATERIAL]~~ TAX CREDIT--AGRICULTURAL WATER
CONSERVATION EXPENSES.--

A. A taxpayer may claim a credit against the
taxpayer's income tax liability equal to seventy-five percent
of incurred expenses, not to exceed a maximum annual credit of
ten thousand dollars (\$10,000), for eligible improvements in
irrigation systems or water management methods. The credit may
be claimed for the taxable year in which the expenses are

1 incurred if the taxpayer:

2 (1) in that year owned or leased a water right
3 appurtenant to the land on which an eligible improvement was
4 made;

5 (2) files an individual New Mexico income tax
6 return for that year;

7 (3) in that year is not a dependent of another
8 individual; and

9 (4) does not take a tax credit for the same
10 expense on any corporate tax return filed by the taxpayer.

11 B. As used in this section, "eligible improvement
12 in irrigation systems or water management methods" means an
13 improvement that is:

14 (1) made after January 1, 2006;

15 (2) consistent and complies with a water
16 conservation plan approved by the local soil and water
17 conservation district in which the improvement is located; and

18 (3) primarily designed to substantially
19 conserve water on land in New Mexico that is owned or leased by
20 the taxpayer and used by the taxpayer or the taxpayer's lessee
21 to:

22 (a) produce agricultural products;

23 (b) harvest or grow trees; or

24 (c) sustain livestock.

25 C. Taxpayers who are considered for federal income

.152687.1

1 tax purposes as co-owners of the land on which an eligible
2 improvement in irrigation systems or water management methods
3 is made may claim the pro rata share of the credit allowed
4 pursuant to this section based on the co-owner's ownership
5 interest. The total of the credits allowed all the taxpayers
6 considered co-owners may not exceed the amount that would have
7 been allowed a sole owner of the land.

8 D. A husband and wife who file separate returns for
9 a taxable year in which they could have filed a joint return
10 may each claim only one-half of the credit that would have been
11 allowed on a joint return.

12 E. If the allowable tax credit in a taxable year
13 exceeds the income taxes otherwise due from a taxpayer pursuant
14 to the Income Tax Act, or if there are no income taxes due from
15 the taxpayer, the taxpayer may carry forward the amount of the
16 credit not used in that year to offset the taxpayer's liability
17 for income taxes pursuant to the Income Tax Act for not more
18 than five consecutive taxable years.

19 F. The soil and water conservation commission, with
20 information provided by the state engineer, shall promulgate
21 rules to implement this section, and those rules shall include
22 detailed guidelines to assist the department in determining
23 whether improvements in irrigation systems or water management
24 methods qualify for the credit available under this section.

25 G. A taxpayer claiming the credit shall provide

underscored material = new
[bracketed material] = delete

1 documentary evidence of the amount of water conserved during
2 the period for which the credit is claimed if requested by the
3 department.

4 H. Water conserved due to improvements in
5 irrigation systems or water management methods and for which a
6 credit is claimed shall not be subject to abandonment or
7 forfeiture, nor shall the conserved water be put to consumptive
8 beneficial use."

9 Section 2. A new section of the Corporate Income and
10 Franchise Tax Act is enacted to read:

11 "[NEW MATERIAL] TAX CREDIT--AGRICULTURAL WATER
12 CONSERVATION EXPENSES.--

13 A. A taxpayer may claim a credit against the
14 taxpayer's corporate income tax liability equal to seventy-five
15 percent of incurred expenses, not to exceed a maximum annual
16 credit of ten thousand dollars (\$10,000), for eligible
17 improvements in irrigation systems or water management methods.
18 The credit may be claimed for the taxable year in which the
19 expenses are incurred if the taxpayer:

20 (1) in that year owned or leased a water right
21 appurtenant to the land on which an eligible improvement was
22 made; and

23 (2) files a New Mexico corporate income tax
24 return for that year.

25 B. As used in this section, "eligible improvement

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1 in irrigation systems or water management methods" means an
2 improvement that is:

3 (1) made after January 1, 2006;

4 (2) consistent and complies with a water
5 conservation plan approved by the local soil and water
6 conservation district in which the improvement is located; and

7 (3) primarily designed to substantially
8 conserve water on land in New Mexico that is owned or leased by
9 the taxpayer and used by the taxpayer or the taxpayer's lessee
10 to:

11 (a) produce agricultural products;

12 (b) harvest or grow trees; or

13 (c) sustain livestock.

14 C. Taxpayers that are considered for federal income
15 tax purposes as co-owners of the land, or co-owners of a pass-
16 through entity that owns the land, on which an eligible
17 improvement in irrigation systems or water management methods
18 is made may claim the pro rata share of the credit allowed
19 pursuant to this section based on the co-owner's ownership
20 interest. The total of the credits allowed all the taxpayers
21 considered co-owners may not exceed the amount that would have
22 been allowed a sole owner of the land.

23 D. If the allowable tax credit in a taxable year
24 exceeds the corporate income taxes otherwise due from a
25 taxpayer pursuant to the Corporate Income and Franchise Tax

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underscoring material = new
[bracketed material] = delete

1 Act, or if there are no taxes due pursuant to the Corporate
2 Income and Franchise Tax Act, the taxpayer may carry forward
3 the amount of the credit not used in that year to offset the
4 taxpayer's liability for corporate income taxes pursuant to the
5 Corporate Income and Franchise Tax Act for not more than five
6 consecutive tax years.

7 E. The soil and water conservation commission, with
8 information provided by the state engineer, shall promulgate
9 rules to implement this section, including detailed guidelines
10 to assist the department in determining whether improvements in
11 irrigation systems or water management methods qualify for the
12 credit available under this section.

13 F. A taxpayer claiming the credit shall provide
14 documentary evidence of the amount of water conserved during
15 the period for which the credit is claimed if requested by the
16 department.

17 G. Water conserved due to improvements in
18 irrigation systems or water management methods and for which a
19 credit is claimed shall not be subject to abandonment or
20 forfeiture, nor shall the conserved water be put to consumptive
21 beneficial use."

22 Section 3. CONTINUED APPLICABILITY OF TAX CREDIT.--The
23 balance of a tax credit granted before December 31, 2010 to a
24 taxpayer pursuant to Section 1 or 2 of this act may be applied
25 after that date in the manner provided for in Section 1 or 2 of

.152687.1

underscoring material = new
[bracketed material] = delete

1 this act against the taxpayer's personal or corporate income
2 tax liability, as applicable, as if the provisions of Sections
3 1 and 2 of this act were still in effect.

4 Section 4. DELAYED REPEAL.--Sections 1 and 2 of this act
5 are repealed effective January 1, 2011. Section 3 of this act
6 is repealed effective January 1, 2015.

7 Section 5. APPLICABILITY.--The provisions of this act
8 apply to taxable years beginning on and after January 1, 2006
9 and ending on or before December 31, 2010.